STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of RONALD DIETRICH, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TAMMY K DIETRICH,

Respondent-Appellant,

and

THOMAS P DIETRICH,

Respondent.

UNPUBLISHED
August 15, 2006

No. 267978
Genesee Circuit Court
Family Division
LC No. 96-104733-NA

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Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor child under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

The condition leading to adjudication was environmental neglect in the form of a home that was so cluttered and dirty that it was unfit and dangerous for a child, a condition that extended back to 1991 with regard to respondent mother and to 1999 with respect to respondent father. Other conditions leading to the child's wardship were the emotional issues that prevented respondents from rectifying the condition of the home and respondent father's substance abuse.

In addition to the proceeding that prompted these appeals, the family had been the subject of cases alleging environmental neglect in 1991, 1993, 1995, 1998, and 2001, the trial court judge in this case was familiar with the family having presided over respondents' protective services cases since 1998. After nearly 15 years of periodic agency involvement and provision of numerous services, respondent mother never substantially improved the condition of her living environment, even with the addition of respondent father to the home, and thus environmental neglect remained a long-term issue. As a result of prior proceedings, respondent mother had placed two of her children in the custody of others or under guardianships to forestall termination of her parental rights, and respondents voluntarily released their parental rights to two other children just after the birth of Ronald, the subject of this proceeding.

During this two-year proceeding, respondents maintained stable housing, completed parenting classes, maintained a steady income, and visited Ronald regularly, but did not rectify the condition of the home or attend counseling consistently enough to address the underlying issues leading to their inability to clean the home. The home remained unfit by the time of the December 2004 termination hearing, but because of some confusion in provision of services and counsel's statement that the next three months would show whether respondents could rectify the condition of the home, the trial court deemed termination premature and ordered the agency to provide additional services. Thereafter, respondents made no progress on remedying the condition of the home or obtaining counseling for their various issues, a termination petition was filed in April 2005, and the order terminating respondents' parental rights was entered in January 2006.

Respondents argue on appeal that the agency exhibited a middle class bias against the low-income respondents, exaggerated respondents' shortcomings, and did not make sufficient reunification efforts but was intent on terminating their parental rights as shown by the fact that a termination petition was filed only three months after the court ordered additional services. The record showed that the agency offered numerous services over several years and respondents failed to cooperate. We are not convinced that the agency exhibited a bias against respondents or exaggerated their shortcomings. Although standards of cleanliness vary widely from person to person, the record showed that several caseworkers and service providers over a 15 year period had concluded that the condition of respondents' home was unfit and dangerous for children. While the agency requested termination three months following the order that additional services be provided, the record showed that the parties understood that respondents would be given one

last reporting period in which to demonstrate progress or the request for termination would be reinstated.

Pursuant to the testimony of the caseworkers in this proceeding and photographs admitted into evidence, the trial court did not clearly err in finding that respondents failed to rectify the condition of an unfit home and the underlying emotional and substance abuse issues that caused that failure. The evidence was clear that respondents failed to provide proper care or custody of Ronald and that the condition of the home posed a risk of harm to Ronald. Given the fact that respondents had not rectified the condition of the home in 15 years, the trial court did not err in finding that there was no reasonable likelihood that they would do so within a reasonable time.

Further, the evidence did not show that termination of respondents' parental rights was clearly contrary to the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Ronald was removed from respondents' care at birth, and the evidence clearly showed that Ronald could not be reunited with respondents within a reasonable time. Therefore, termination and the permanence of an adoptive home were in his best interests. Custody in the care of, or a guardianship under, respondent mother's adult daughter was not a solution affording Ronald stability, as evidenced by the fact that the daughter herself had been returned to respondent mother from her father's custody without agency approval, and another daughter's guardianship did not provide permanence but had been terminated after a few short years.

Respondent father argues on appeal that he was denied effective assistance of counsel at the time of Ronald's removal, at the adjudication trial, and at the termination hearing. The right to due process indirectly guaranteed respondents assistance of counsel in this child protective proceeding. *Reist v Bay Circuit Judge*, 396 Mich 326, 349; 241 NW2d 55 (1976). To establish a claim of ineffective assistance of counsel, respondent father is required to show that his attorney's performance was prejudicially deficient, and that under an objective standard of reasonableness, the attorney made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). In showing that counsel's representation was deficient, respondent father must overcome a strong presumption that counsel's performance constituted sound trial strategy. *Strickland v Washington*, 466 US 668, 690; 104 S Ct 2052, 80 L Ed 2d (1984). It is a general rule that this Court is reluctant to substitute its judgment for that of trial counsel in matters of trial strategy. *People v Cicotte*, 133 Mich App 630, 636-637; 349 NW2d 167 (1984). To demonstrate prejudice, the defendant [respondent] must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Strickland*, *supra* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* at 694.

The record does not show that counsel for respondent father was ineffective. Even though respondents had rectified the issue of homelessness by the time of Ronald's preliminary hearing, which had been an issue leading to their release of parental rights to other children, a long history of environmental neglect was substantiated and removal was warranted. The outcome of the preliminary hearing would not have been different had regular counsel appeared instead of substitute counsel. Likewise, counsel was not ineffective in advising respondent father to plead no contest to an unfit home at the adjudication trial because inspection of the home the prior day showed that it was unfit for a child. The allegation that respondents were

homeless was specifically not included in the plea and was stricken from the petition. The outcome of the adjudication trial would not have been different had counsel advised a different trial strategy. Finally, counsel was not ineffective in advising respondents not to testify at the termination hearing and in calling only one witness on their behalf. Counsel characterized this as trial strategy and respondents expressed their agreement to that strategy under oath and on the record. Also, respondent father does not reveal the names of other witnesses he desired to call or the nature of their testimony.

Lastly, respondent father argues that respondent mother qualified as disabled for purposes of the Americans with Disabilities Act of 1990 (ADA), 42 USC 12101, *et seq.*, because of an asthmatic condition, and that he also qualified via his relationship with her. He avers that respondent mother's lack of health prevented her from keeping the home in a suitable condition, and the trial court's penalization of respondent mother for her disability violated the ADA and requires reversal of the order terminating parental rights. Respondent father has failed to cite any authority in support of his position. Respondent father may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997), nor may he give issues cursory treatment with little or no citation of supporting authority. *People v Kelly*, 231 Mich App 627, 641; 588 NW2d 480 (1998). Nevertheless, we note that reversal is not warranted on this ground because termination proceedings are not "services, programs or activities" for purposes of the ADA and a respondent may not raise violations of the ADA as a defense to termination of parental rights proceedings. *In re Terry*, 240 Mich App 14, 24-25; 610 NW2d 563 (2000).

Having found that the trial court did not clearly err in finding that the statutory grounds for termination of respondents' parental rights were established by clear and convincing evidence, MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989), we affirm.

Affirmed.

/s/ Alton T. Davis
/s/ Jessica R. Cooper
/s/ Stephen L. Borrello